Before the National Labor Relations Board Region 29

Paragon Security **EMPLOYER**

And

National League of Justice and Security Professionals (NLJSP) **Petitioner** **in re: 29-RC- 229372**

And

SEIU Local 32 BJ **Party of Interest**

Request for Review

Statement of the Instant Case

The Petitioner , NLJSP, a pure Guard Union under 9(b)(3) filed a sufficient showing of interest with Region 2 NLRB on October 12, 2018 and a NLRB e-file RC petition on October 13,2018 to represent a unit between 200 and 300 Armed Protective Service Officers (Guards under the NLRA). The petitioned for unit is composed of officers tasked with physical protection of a series of buildings that include the offices of Region 2 NLRB and the case was passed to Region 29 NLRB.

The Petitioner seeking an election litigated the issue of a Successor

Bar raised by the Party of Interest who argued that they held a presumption of majority that could not be challenged under (***UGL-UNICCO Service Co. 357 NLRB 76 801-813***). The RD of Region 29 adopted this position in error.

The Party of Interest was the Union for the affected unit based upon a voluntary recognition with the predecessor Employer FJC Security executed upon October 28, 2013. There is no dispute that the Party of Interest, a mixed guard Union and a signatory to the Collective Bargaining Agreement attached to the Department of Homeland Security Contract filed as a Joint exhibit at the Hearing 11/07/2018 was the Union for the affected unit until September 30, 2018. The Employer in the instant case became the DHS Employer on October 1, 2018 . The Employer had no authority to negotiate terms or conditions of employment for the affected unit until October 1,2018 and the Employer representative, Laura Hagan, stated that recognition prior to October 1, 2018 was “preliminary, conditional” or governed by a “caveat”.

The Party of Interest has never produced any letter of voluntary recognition and indeed on 11/07/2018 Employer representative Laura Hagan VP of Labor Relations and General Counsel for Paragon stated from the witness stand that she has never issued a letter of recognition. In fact Ms Hagan reported that she received documents on October 31,2018 from the Party of Interest regarding “Article 28” as the Local 32 BJ recognition clause 18 days after

the petition was filed in the instant case. Ms Hagan also reported that she had reached an agreement in principle on the recognition clause in the hallways outside of Hearing room #3 in the suite of offices maintained by Region 29 NLRB on November 7,2018.

The Party of Interest has never obtained a more recent card check since on or about October 28, 2013 for the prospective electors in this petition. The Employer representative Laura Hagan testified that Paragon has made no attempt to determine if the Party of Interest has the support of the majority of the employees in the bargaining unit. Failing to assure themselves through a certain due diligence that Local 32 BJ represents an un-coerced majority, could subject the Employer to sustained claims for 8(a)(1),(2) and (3) of the Act and repayment of dues and Health and Welfare funds. I refer to (***Rainey Security Inc. 274 NLRB 41 (1985)*** as a Federal Security Contract where the new Contractor granted voluntary recognition of the IGWA, a 9(b)(3) Union.

The Party of Interest (P.O.I) is a mixed-guard Union and can only represent a Unit of Guards upon the voluntary recognition of the Employer. In the instant case, the Employer began speaking to the P.O.I. prior to October 1, 2018. The Employer has made no attempt to ascertain if the P.O.I. has an un-coerced majority of support. The P.O.I. has submitted no cards to confirm an un-coerced majority to either the Employer or a neutral third-party.

The preliminary, conditional or caveat shrouded recognition of a Union by

an Employer lacks any authority to set terms or conditions of employment as was the case of the Employer Paragon prior to October 1, 2018. Since October 1,2018 the Employer has made no effort to count cards to establish if 32 BJ has standing to request a valid voluntary recognition of an un-coerced majority.

The case of (***NLRB V White Superior Division, White Motor Corp., 6 Circuit, 1968, 404 F.2d 1100***) says quite clearly that an Employer cannot be forced directly or indirectly to recognize a mixed guard union to represent a unit of Guards. Mixed Guard Unions have fewer rights as a Union when trying to represent a pure Guard unit as was found clearly when the Second Circuit upheld the NLRB in (***Truck Drivers Local 807 755 F,2d 5 (2d Circuit 1985****).*

The case of UGL-UNNICO, if it was applicable, directly compels the Employer to recognize P.O.I. The use of UGL-UNICCO would directly compel the Employer, Paragon to accept a mixed-Guard Union. There is no Successorship bar to be wielded by SEIU 32 BJ. The Employer has failed to determine if the SEIU 32 BJ has an un-coerced majority that seeks to be represented by them.

The Board cannot countenance a violation of 9(b)(3) under the UGL-UNICCO decision as a routine Successorship for a mixed guard union in a pure Guard unit. The Employer is of course authorized to voluntarily recognize the P.O.I. after an assurance of an un-coerced majority but not until after the petitioner gets a representative election conducted by Region 29.

The Employer believed the P.O.I. had a presumption of majority because of UGL-UNICCO that could not be rebutted so they began discussions that they believed they could not break off. The Employer was in error. The P.O.I. as a mixed guard Union had no presumption of a continuing majority after October 1,2018 when their CBA ended along with the departure of Allied Universal/FJC Security upon the commencement of "productive hours" on the DHS Service Contract as awarded to Paragon Security. Paragon in a job fair prior to October 1, 2018 expressly told all incumbent employees that they would not honor the P.O.I. collective bargaining agreement with the Predecessor Employer.

The Petitioner has filed for an election less than two weeks after the Employer began to provide productive service. There is no Successor Bar. There is no contract bar and all parties agree to that. A recognition bar requires that the law of (***Lamons Gasket 357 NLRB 72 (2011***)) governs, i.e. a showing of majority support. Lamons Gasket overruled Dana but clearly voluntary recognition can only proceed after a showing of majority support. A voluntary recognition without a showing of majority support runs afoul of (***Ladies Garment Workers V NLRB (Bernard Altmann*****) 366 US 731 (1961)** and may be seen as unlawful.

The Petitioner has applied for an election in the amended unit with a sufficient showing of interest. The P.O.I. as a mixed Guard Union is not eligible for ballot inclusion under (***University of Chicago 272 NLRB 873*****.**)The P.O.I. is not

eligible to be a successor in a pure-guard Union. The P.O.I has not sought a showing of majority support to provide the Employer and the Employer has not sought a showing of majority support.

There is no recognition bar and hence no bar to election in the amended unit as identified by the DHS contract identifying Paragon sites in Manhattan, the Bronx and Westchester County New York.

The Petitioner seeks a mail ballot election in line with Employer's request. The distances and traffic issues not to mention scheduling for Security Officers working in separate boroughs of New York City and Westchester Coumty NY on 9, 10 and 12 hour shifts would lead to a very poorly subscribed election in a manual election. The concept advanced at November 7th Hearing by P.O.I. that an off-site manual balloting would be even possible with electors traveling from Manhattan, the Bronx and Westchester County to vote in Brooklyn is problematic at best.

The Regional Director of Region 29 has erred in the application of [***Stay Security 311 NLRB 33 pages 252-253****]* which is a contract bar case and is not applicable in the instant case. It would be applicable if the SEIU and Paragon already had a fully executed Collective Bargaining Agreement.

The Regional Director of Region 29 has afforded the Employer the P.O.I. mixed Guard Union the Successor Bar as countenanced in the 2011

UGL-UNICCO decision. If the incumbent was any Union but a mixed guard union in a pure guard unit this would be a proper application of the UGL-UNICCO Successor doctrine. The language in paragraph 2 of the RD DDO " in my view the successor bar doctrine applies herein." The Board held clearly in *Stay Security* that a pure guard Union could not petition for a unit in the middle of a settled contract. The Board in {***Wells Fargo 270 NLRB 787(1984)***} refused to issue a bargaining order for a non-guard union in a pure-guard unit The Board's majority was astute and elegant in {***University of Chicago 272 NLRB 126 page 876***} "we shall not, indeed cannot sanction a practice which uses Board processes in furtherance of an end which a specific provision of the Act was plainly intended to discourage." There is clearly no legitimate reason to grant the Party of Interest the deference of UGL-UNICCO successorship and directly compel Paragon to recognize the Party of Interest. There is no legitimate practice that preserves the rights of the affected employees under the Wagner Act as amended without a secret ballot representative election or a majority showing of interest after the Employer in the instant case began providing Security Services in the New York City area .

The RD of Region 29 confesses in paragraph 2 page 9 of his Direction and Order signed December 18, 2018 that "the Board has not specifically considered successor bar doctrine in the context of an incumbent union that admits guards and Non-guards to it's membership," It is clearly time for the Board Majority to

find that a mixed Guard Union that; (1) can't seek a bargaining order for a pure guard unit (2) can't get on a ballot for a guard unit should (3) not be allowed to maintain successorship in a guard unit without a showing of an un-coerced majority. There has been a great deal of employee turnover in the last five years and the P.O.I. enjoys no support among the employees in the affected unit.

Inter Alia: When the RD DDO is examined under the logic of Reductio ad Absurdum it falls completely apart. The Employer is not required to voluntarily recognize at any time a mixed guard union to represent a pure Guard unit. The RD of Region 29 by granting Successorship rights to the P.O.I. (a mixed Guard Union) creates a requirement that the Successor Employer bargain with them. Based on that, if the Successor Employer refused to recognize the P.O.I., would the RD of Region 29 grant a bargaining order in violation of {***Wells Fargo 270 NLRB 787(1984)***}?

The petitioner seeks a review of the RD DDO of December 18, 2018 in the instant case and an immediate order for a mail ballot election.

For the Petitioner.

Respectfully submitted,

Ronald A. Mikell

Ronald A. Mikell, President
NLJSP